

1 MS. SCHMELTZER: He was not general manager of the  
2 station during the license period. He was acting general  
3 manager and operations manager.

4 MS. GREENE: But the operations manager, at least  
5 from the findings of the ALJ, seemed to be the person most  
6 deeply involved in the employment and in the relationship  
7 with counsel.

8 MS. SCHMELTZER: Well, there are a number of  
9 factors that I think you have to realize here. First of  
10 all, it was the consultant, Concert Music Broadcast Service,  
11 who initially operated the FM station through their own  
12 personnel.

13 MS. GREENE: Which would go to the question of  
14 whether there was any discriminatory intent in coming up  
15 with the requirement. And I don't think that's what we're  
16 talking about at the moment.

17 MS. SCHMELTZER: Right.

18 MS. GREENE: We're talking about how it was that  
19 counsel came to the view and represented that there was a  
20 requirement for a classical music background.

21 MS. SCHMELTZER: Mr. Cleary of CMBS had  
22 recommended that the station hire salespersons with  
23 classical music expertise. The station tried to do that.  
24 Indeed, the record reflects that at least seven out of the  
25 15 salespeople that were hired had classical music

1 background.

2 We don't know whether some of the others may have  
3 because we couldn't find all the resumes.

4 CHAIRMAN MARINO: But do I misread the record? Do  
5 I misread the record that at some point along the way, when  
6 the sales figures weren't as good as they should have been,  
7 reality set in and a switch was from salesmen who know  
8 classical music to salesmen who can sell? Is that what  
9 happened --

10 MS. SCHMELTZER: That's what Mr. Stortz said. He  
11 said this was a requirement and, you know, as things  
12 occurred, there were positions that had to be filled  
13 quickly. Sales positions that had to be filled quickly, and  
14 sometimes we hired people who didn't have classical music  
15 background. And our thinking on this whole matter evolved  
16 as well.

17 The important point is this was never used to  
18 discriminate against minorities. It was -- we hired a  
19 minority salesperson. We hired Caridad Perez --

20 CHAIRMAN MARINO: But that's ex post facto. You  
21 bring in this requirement, if it was a requirement, or this  
22 preference, if it was a preference, which appears, from the  
23 record, to have been abandoned.

24 MS. SCHMELTZER: All it --

25 CHAIRMAN MARINO: It's an ex post facto

1 rationalization for bad numbers.

2 MS. SCHMELTZER: All it was was an argument that  
3 was raised in defense by counsel. And I don't think it's  
4 fair to hold that the licensee has a discriminatory intent  
5 based on that argument. Indeed --

6 MS. GREENE: The question, going to lack of  
7 candor, isn't the discriminatory intent. It's the intent to  
8 mislead the Commission.

9 MS. SCHMELTZER: There wasn't any intent to  
10 mislead the Commission. The licensee in fact had good EEO  
11 statistics. He'd had over 100 percent of parity up until  
12 1987 and it had over 50 percent of parity --

13 CHAIRMAN MARINO: But, Ms. Schmeltzer, the record  
14 once again shows that you had very good statistics up until  
15 '87, and then the bottom seems to fall out in the last three  
16 years, and that was the problem, wasn't it?

17 MS. SCHMELTZER: But the record also shows that  
18 they recruited during the last three years, that the bottom  
19 fell out only because one minority employee died and two  
20 others left unexpectedly. One was about to be -- was going  
21 to be promoted but chose to leave the broadcast industry.

22 MS. GREENE: Well, the recruitment is another  
23 question. The recruitment efforts, certainly during Mr.  
24 Lauher's time, there was an effort to review the whole  
25 performance of the station in the EEO area. And he wrote,

1 as I understand, letters to a number of potential referral  
2 sources saying, "Nothing's available now. Send us  
3 applications. We'll be back in touch when we have  
4 something."

5 And that was the last that these sources ever  
6 heard from the station, wasn't it? When subsequent job  
7 openings came up, were any of these sources ever contacted  
8 and advised of a specific job opening?

9 MS. SCHMELTZER: The record reflects that in  
10 October of '89, and in November of 1989, the St. Louis  
11 Broadcast Center and the Lutheran Employment Project were  
12 contacted, and in one case we hired a female and in one case  
13 we hired a minority. So those sources were used in the fall  
14 of 1989.

15 What you have to recognize is that there was an  
16 absence of general managers at both stations during this  
17 period of time. New general managers came in in October of  
18 '89 and there was a certain -- of getting up to speed.

19 MS. GREENE: And Mr. Stortz was the same element  
20 of continuity though, wasn't he, during that period?

21 MS. SCHMELTZER: He was an element of continuity  
22 but he was not the general manager during that period of  
23 time.

24 MS. GREENE: Well, who was running the show during  
25 that time, the interim?

1 MS. SCHMELTZER: It was in flux. And that is the  
2 argument that we've made previously in connection with that.

3 I would also like to focus on the language that  
4 the Commission criticized us for in the model EEO program.  
5 In fact, that language does not represent a lack of candor  
6 at all. First of all, it was Mr. Stortz' good-faith belief  
7 that the station was actively recruiting. The facts  
8 demonstrate that we were recruiting. We may not have been  
9 perfect but we certainly weren't as bad as a lot of  
10 licensees who'd gotten renewals without any conditions and  
11 certainly without a fine.

12 And I would like to say with respect to the fine,  
13 that I think it's totally unprecedented in this situation to  
14 give this church a fine of \$50,000 based on these arguments,  
15 the arguments of counsel, and what I think the Judge has  
16 misconstrued with respect to the model EEO program.

17 In fact, it was the Judge that exaggerated what  
18 Mr. Stortz had said. Mr. Stortz didn't say that classical  
19 music was an absolute requirement. In fact, he tried to  
20 explain exactly what he meant in the December 1992 reply.  
21 And I think if you carefully read that reply, it shows that  
22 he was trying to explain what he meant. And he wrote a memo  
23 to counsel that said, "We don't mean this as any kind of an  
24 excuse."

25 I think Mr. Stortz and the Church were trying to

1 be candid with the Commission. They've always tried to  
2 abide by the Commission's rules as they understand them.  
3 They've been a licensee for 70 -- well, they've been in  
4 existence for 70 years and a licensee ever since the  
5 Commission and its predecessor agency existed. And they  
6 have a marvelous record of compliance with FCC rules.

7 This is really -- this is not a case of  
8 misrepresentation. It's not a case of discrimination. It's  
9 really a very routine EEO case, absent the religious  
10 dimension. And the facts just do not mandate either a lack-  
11 of-candor finding or a \$50,000 fine in this particular  
12 instance.

13 MS. GREENE: But a fine goes to the lack-of-candor  
14 finding.

15 MS. SCHMELTZER: That's correct.

16 MS. GREENE: And not to the EEO findings, as I  
17 understand it.

18 MS. SCHMELTZER: That's correct.

19 MS. GREENE: There's also some confusion in the  
20 sort of pleadings as to whether there is a short-term  
21 renewal. We don't read in the ordering clauses anything  
22 other than full-term renewal.

23 MS. SCHMELTZER: That's the way I read it, with  
24 the conditions of --

25 MS. GREENE: The reporting.

1 MS. SCHMELTZER: The reporting conditions.

2 MS. GREENE: And for the EEO.

3 MS. SCHMELTZER: That's correct.

4 TIMEKEEPER: Ms. Schmeltzer, you're up to rebuttal  
5 time.

6 CHAIRMAN MARINO: Ms. Schmeltzer, how do you  
7 respond to the argument made by the Petitioner that we've  
8 got to be very careful -- the Commission has to be very  
9 careful what it does here because this is one of the few EEO  
10 cases where we really have zeroed in on it, and we're  
11 presented with a record where the Commission had to send out  
12 at least four letters of inquiry and then designate the case  
13 for hearing. We've got before us what appears to be a very  
14 substantial initial decision with the Judge's credibility  
15 findings, and his conclusion is entitled to some weight.

16 MS. SCHMELTZER: I personally think this case  
17 would never have been designated had it come along at a  
18 different time. This case came along on February 1, 1994,  
19 on the same day that the Commission adopted its 1994 EEO  
20 Policy Statement which has since been invalidated, and  
21 adopted stiff fines, which it now is forced to reconsider in  
22 light of the invalidation of the 1994 Policy Statement.

23 So clearly the Commission was trying to make a  
24 statement on that day, and unfortunately the Church's  
25 renewal application came up.

1 But this is not a case where the Church is a bad  
2 licensee or a discriminator or a misrepresenter. And I  
3 don't think this church should be treated any differently  
4 than any other case.

5 In Metroplex, there was a lot of confusion in the  
6 pleadings that had been filed. In Dixie there was a lot of  
7 confusion in the pleadings that had been filed. Dixie was a  
8 far worse case.

9 I think if the Board looks back at the lack-of-  
10 candor cases it has had before it in the recent past, such  
11 as Calvary Educational and Abacus, it's much -- this is a  
12 much clearer case for finding no lack of candor.

13 CHAIRMAN MARINO: Let me come back to the  
14 procedural argument I asked you earlier.

15 Do you think the Board has been granted  
16 jurisdiction to rule on your third -- really your last three  
17 issues, King's Garden is no longer good law, it's all been  
18 changed? Do we have that kind of authority?

19 MS. SCHMELTZER: I think the Board is obligated to  
20 point out that the Commission needs to revisit this whole  
21 issue in light of the things that have occurred, such as the  
22 Amos case and the 1993 Religious Restoration --

23 CHAIRMAN MARINO: The licensee had no obligation  
24 to point that out to the Commission when this case was  
25 designated for hearing?



1 MS. SCHMELTZER: Well, I don't think that the  
2 licensee could have envisioned what occurred during the  
3 hearing with respect to the scrutiny that it was exposed to  
4 on the various positions. And I think that regardless of  
5 what the licensee would have argued in 1990, which was  
6 before some of the things that we're talking about, I  
7 think --

8 CHAIRMAN MARINO: But you could have even  
9 petitioned for -- or at least filed an application for  
10 review directed to the Designation Order which made it very  
11 clear that you had asked it to apply King's Garden and it  
12 was going to apply King's Garden in this case.

13 MS. SCHMELTZER: Well, I guess -- you know, the  
14 rules with regard to reconsideration of the Hearing  
15 Designation Order are extremely limited.

16 CHAIRMAN MARINO: You could have filed an  
17 application for review and preserved your point. The  
18 Commission would have been aware that you're now challenging  
19 the whole underpinning of its policies.

20 MS. SCHMELTZER: We've been challenging the  
21 underpinning of its policy since this hearing started. We  
22 earlier said that --

23 CHAIRMAN MARINO: Where?

24 MS. SCHMELTZER: Since the hearing -- we've been  
25 doing that since the beginning of this hearing in the

1 context of the --

2 CHAIRMAN MARINO: But the ALJ doesn't have any  
3 authority to change the Commission's policies any more than  
4 we do.

5 MS. SCHMELTZER: We don't think the Commission can  
6 apply policies that are unconstitutional.

7 CHAIRMAN MARINO: So we've had a hearing,  
8 according to your position, and I think the Board Member  
9 Greene already indicated this earlier, that everything is  
10 unconstitutional, the only real question we have is whether  
11 you've misrepresented or were lacking candor, because even  
12 if the policies are unconstitutional, you still have to be  
13 completely candid with the Commission.

14 MS. SCHMELTZER: That's right. And we believe we  
15 have been.

16 CHAIRMAN MARINO: So that may be the only issue we  
17 should reach then?

18 MS. SCHMELTZER: Well, I mean unless you feel -- I  
19 personally think that the Review Board can comment on the  
20 constitutional issues.

21 CHAIRMAN MARINO: But you know we certified --  
22 long ago we even certified the question of how would we  
23 apply a female preference in one case and we set out our  
24 limited jurisdiction there. And the Commission agreed that  
25 that's the type of question that should be certified, except

1     that they thought they had already given us plenty of  
2     guidance.

3             Have they given us any guidance on the issues that  
4     you're raising?

5             MS. SCHMELTZER: I think it's very unfortunate  
6     that the Commission has not given religious broadcasters  
7     guidance, despite the fact that the National Religious  
8     Broadcasters Association had sought guidance concerning the  
9     King's Garden --

10            CHAIRMAN MARINO: But the licensee never did in  
11     this case.

12            MS. SCHMELTZER: Well, I don't think the  
13     licensee -- first of all, in connection with the lack of  
14     candor. If you look at the model -- if you look at that  
15     Form 396, it gives no guidance whatsoever to religious  
16     broadcasters. We had no idea that we were subsequently  
17     going to be asked the kinds of questions that we were asked  
18     during the hearing. For instance, "Why didn't you say in  
19     the Form 396 that you were a church and hired for positions  
20     that required religious knowledge?"

21            CHAIRMAN MARINO: Thank you, Ms. Schmeltzer.  
22            We'll give you your full three minutes for  
23     rebuttal.

24            MS. SCHMELTZER: Thank you.

25            CHAIRMAN MARINO: Mr. Zauner.

1           MR. ZAUNER: Good morning. My name is Robert A.  
2   Zauner, and I represent the Chief of the Mass Media Bureau  
3   in this proceeding.

4           The Mass Media Bureau supports the initial  
5   decision in this case. We think it represents a well-  
6   balanced view of the facts that were developed in the  
7   proceeding. We think that the conclusions that the Judge  
8   drew were appropriate given the facts. And we are in full  
9   support of the initial decision as it stands.

10          I would like to address one of the latter  
11   arguments that came up here in the discussion, and that is  
12   whether or not the Commission's EEO program as regards  
13   religious broadcasters is in fact unconstitutional.

14          And the major case that I think the Church has  
15   relied on is the Amos case. And Amos held that the blanket  
16   exemption for religious institutions in Title VII of the  
17   Civil Rights Act is constitutional as applied to non-profit  
18   corporations or organizations.

19          First I'd point out that there is no similar  
20   provision in the Communications Act that is similar to  
21   Section 702 that exists in Title VII. So we are not faced  
22   with that kind of question here.

23          Moreover, even assuming there were, the court case  
24   in Amos only goes so far as to say that the exemption was  
25   constitutional as applied to non-profit organizations, and

1 here at least the FM station is a profit organization, and  
2 that's where the main focus of what's happened in this  
3 proceeding has been. Let' see.

4 MS. GREENE: I have a question while you are  
5 pausing.

6 Has the Commission in any other cases considered  
7 in effect non-compliance or less than complete compliance  
8 with the EEO program to be the basis for misrepresentation  
9 or lack of candor?

10 MR. ZAUNER: Not that I'm aware of offhand, no. I  
11 don't believe so. Non-compliance with the EEO program?

12 MS. GREENE: Imperfect compliance --

13 MR. ZAUNER: There would have to be a  
14 representation made in conjunction with that, and not that  
15 I'm aware of. I don't hold myself as an expert generally on  
16 the Commission's EEO rulings. There have been many of them  
17 over a long period of time. But I can't think of any  
18 offhand, and I would presume that if there was a question of  
19 misrepresentation or lack of candor, that that would be  
20 grounds for designating the case for hearing. Because  
21 that's always been a very serious consideration that the  
22 Commission has had.

23 Just along these lines, I tend to agree with the  
24 Church's analysis and the analysis in the initial decision  
25 that arguments of counsel, and that arguments generally do

1 not constitute fair grounds for misrepresentation. And I  
2 believe that the Florida State Conference of NAACP v. FCC  
3 case cited at paragraph 198 of the Initial Decision is  
4 dispositive of that question. And I think here what we do  
5 have is an argument of counsel.

6 But besides that --

7 CHAIRMAN MARINO: Purporting to report what the  
8 facts are though.

9 MR. ZAUNER: Yes, yes. Now, aside from that, if  
10 there's a fact represented to the Commission, that is where  
11 the misrepresentation would occur, not in the argument.

12 And what I'm doing, I guess, is addressing here  
13 the inherent discrimination argument that the NAACP has  
14 advanced. I don't think you can find inherent  
15 discrimination on the part of a licensee on the basis of an  
16 argument of counsel. And I believe that if you look at  
17 paragraph 198 of the Initial Decision, that there's a very  
18 good analysis of that and a correct and a legal analysis of  
19 that based upon the Florida State Conference of NAACP case.

20 Let's see.

21 CHAIRMAN MARINO: I would also point out here and  
22 I think as the NAACP acknowledges, that there was no  
23 determination of any discrimination against any individual.  
24 And, of course, that was not really at issue in this  
25 proceeding. This proceeding really concerned the

1 recruitment efforts of the licensee.

2 And in speaking about the recruitment efforts, I  
3 would point out that in the course of questioning counsel  
4 for the Church, counsel mentioned that after Lauher had sent  
5 out his letters, that certain sources were re-contacted.  
6 But please remember that Lauher did not send out just one or  
7 two letters. He sent out 10 letters, and many of these were  
8 to more general employment sources. Eight of these 10 at  
9 least were not re-contacted. There were only one or two  
10 that were re-contacted and I think that these were Lutheran  
11 sources that had been used in the past anyway.

12 I think the point here is that there was a  
13 reversion back to the old process after Mr. Lauher left the  
14 station. Mr. Lauher had recognized that in fact that the  
15 Church's efforts in recruiting were insufficient and  
16 attempted to rectify that.

17 CHAIRMAN MARINO: Does the record reveal, and I  
18 think the Judge makes a finding that he wasn't discharged  
19 because he was trying to improve the EEO program? Why was  
20 he discouraged? Because sales figures weren't where they  
21 should have been or what?

22 MR. ZAUNER: That's correct. Apparently the  
23 Church did not believe that Mr. Lauher's performance in the  
24 sales area was sufficient to warrant his retention. And Mr.  
25 Lauher himself acknowledged that and did not seem to hold

1 any grudge one way or the other about it. And he himself  
2 did not claim that his loss of job had anything to do with  
3 his EEO efforts at the stations.

4 MS. GREENE: Well, it appeared from the initial  
5 decision that once Mr. Lauher left the station the efforts  
6 that he made, changing the application forms, for example,  
7 seemed to go by the wayside.

8 MR. ZAUNER: That's correct. That's the point  
9 that I was making. Once he left, there really wasn't a  
10 follow up, one they'd hoped for. And this is part of the  
11 reason why we're here today I think.

12 MS. GREENE: And yet, as I understand from the  
13 initial decision, Mr. Stortz was always involved in the  
14 employment effort, and is it a question then of inadequate  
15 oversight, inadequate commitment, inadequate attention?

16 MR. ZAUNER: It's hard to know. I mean, I agree  
17 with the Church. I don't believe that there's any  
18 intentional discrimination by the Lutheran Church on this  
19 record, indicated on this record. I think that's one of the  
20 reasons why the Bureau is willing to go along with the  
21 initial decision here.

22 CHAIRMAN MARINO: Is this a fair reading of the  
23 record? That this is a pretty sophisticated area of the  
24 law, and the reason why Mr. Lauher seemed to be on top of it  
25 is because he had received many letters and attended several



1 seminars where the requirements were spelled out, so that he  
2 had a better feel for it than someone who was just not  
3 focusing in on the problem.

4 MR. ZAUNER: I would say that that is correct. I  
5 would agree with that. Mr. Lauher had attended conferences  
6 where he had been made aware of the fact that EEO is a very  
7 important consideration and that the Commission was looking  
8 still at EEO. And it was the one area where a station could  
9 get into trouble.

10 In fact, it was after he returned from this  
11 conference that he sat down and began to look at the  
12 station's EEO performance and go over it and he prepared a  
13 check list and a couple of other things. And spoke to -- I  
14 believe at one point he made a proposal to the Board that  
15 they merge their EEO activities, or something of that  
16 nature. And then he went out and prepared these recruiting  
17 letters and had them sent out.

18 And I think you are absolutely correct, Chairman  
19 Marino, that his attendance at that conference had a lot to  
20 do with raising his awareness of the concerns that the  
21 Commission has for the EEO performance of its licensees.

22 MS. GREENE: And then he raised -- he in turn  
23 raised the awareness of his superiors, didn't he?

24 MR. ZAUNER: He did, yes, certainly to some  
25 extent. I mean after he left, Mr. Stortz, who was the

1 individual who came in, acted as a temporary general manager  
2 until a new general manager came on.

3 CHAIRMAN MARINO: But even during this period of  
4 time when they were both there, some of the letters from the  
5 law firm in Washington seemed to go to Mr. Stortz, even  
6 though Mr. Lauher was still there.

7 MR. ZAUNER: Correct.

8 CHAIRMAN MARINO: So he got some notice of what  
9 the requirements were.

10 MR. ZAUNER: Oh, he should have had some knowledge  
11 too of it. Yes. And he's responsible for knowing these  
12 things in any case as even acting general manager of a  
13 broadcast station.

14 MS. GREENE: Just to clarify one point. When you  
15 were agreeing with counsel for the Church that argument of  
16 counsel is not necessarily a basis for misrepresentation or  
17 lack of candor on behalf of the client, you weren't  
18 including in that comment, were you, the issue about whether  
19 classical music experience was a requirement for employment?

20 MR. ZAUNER: No. That I would consider more of a  
21 factual statement than an argumentative statement. And what  
22 I was really going to I think was the argument of the NAACP  
23 that inherent discrimination could be determined based upon  
24 argument of counsel. And I'm saying I just don't think that  
25 is the case, or should be the case.

1 CHAIRMAN MARINO: Anything further?

2 MR. ZAUNER: Let me see if I have anything.

3 One other thing.

4 CHAIRMAN MARINO: Sure.

5 MR. ZAUNER: I think that the record here was very  
6 complete. I think there's a lot of factual basis here. And  
7 I would also note that my reading of the exceptions that  
8 were filed in this case, no one seemed to dispute any of the  
9 factual findings of the Administrative Law Judge.

10 CHAIRMAN MARINO: In your proposed findings, you  
11 recommended denial of renewal. And then you read the  
12 initial decision and something persuaded you to fully  
13 support the initial decision.

14 Can you enlighten us on -- I think you wrote the  
15 findings too, if I'm not mistaken.

16 MR. ZAUNER: Yes.

17 CHAIRMAN MARINO: Or you were involved in writing  
18 the findings.

19 MR. ZAUNER: I shared that responsibility with  
20 Paulette --

21 CHAIRMAN MARINO: Yes, I saw that.

22 MR. ZAUNER: We thought that the imposition of the  
23 fine was significant and sufficient to deter any other  
24 licensees from misfeasance in this area. We thought -- or  
25 malfeasance. We thought that the decision accomplished what

1 we wanted to accomplish short of taking away the license.

2 And also we took a second look at the station's  
3 long history of compliance with Commission rules and  
4 regulations, and the fact that it is one of the oldest  
5 stations around. And we concluded that given all of these  
6 facts that maybe we were a little too excessive and that the  
7 initial decision was supportable.

8 MS. GREENE: And it's appropriate to renew for a  
9 full term with reporting conditions --

10 MR. ZAUNER: Correct.

11 CHAIRMAN MARINO: For a short term renewal. You  
12 mentioned short term.

13 MR. ZAUNER: Yes. I was looking at that when you  
14 said that.

15 CHAIRMAN MARINO: Is that a Freudian slip? There  
16 are Review Board decisions where we granted short-term  
17 renewals in --

18 MR. ZAUNER: Right.

19 CHAIRMAN MARINO: -- in lack-of-candor cases which  
20 weren't really egregious.

21 MR. ZAUNER: Right. I was looking at that when  
22 you were asking questions of the other counsel and trying  
23 to -- I think you're correct. I think it was a full-term  
24 renewal.

25 CHAIRMAN MARINO: It should have been a short-term

1 renewal because of the lack of candor? As I say, I am  
2 almost positive that there are some Review Board cases where  
3 in a situation where the lack of candor wasn't really  
4 egregious, we may have granted a short-term renewal.

5 MR. ZAUNER: This is one question I really hadn't  
6 given -- hadn't focused on. I apologize. Just off the top  
7 of my head, it wouldn't be of great service to you --

8 CHAIRMAN MARINO: Is \$50,000 in line with  
9 sanctions that have been imposed in other cases?

10 MR. ZAUNER: Well, I think if you look at the  
11 fines that were set forth in the Hearing Designation Order,  
12 the Commission talks about a fine of up to \$250,000. And  
13 here the fine was 20 percent of that amount, which, you  
14 know, I don't know whether that's excessive or not  
15 excessive. And I know there's another case and I can't  
16 recall the name of it off the top of my head, where the same  
17 judge may have assessed the \$50,000 fine. And in that case,  
18 that was the maximum that could be assessed.

19 So I don't know whether he would have gone higher  
20 had he had the opportunity under that factual circumstance  
21 than he did here. It's difficult to tell.

22 And I think to some extent it's a very subjective  
23 judgment in setting any kind of forfeiture in any kind of a  
24 proceeding. Somehow they have to be set and determined.  
25 Whoever does it whether it's the Commission -- somebody has

1 to make these determinations.

2 CHAIRMAN MARINO: I think the Judge finds this --  
3 you don't think Lauher's testimony was tainted by anything  
4 that happened? Was Lauher the one that was interviewed or  
5 tape recorded?

6 MR. ZAUNER: Oh, absolutely not. Absolutely not.

7 CHAIRMAN MARINO: And what type of a witness -- I  
8 mean did you try the case --

9 MR. ZAUNER: Yes.

10 CHAIRMAN MARINO: What type of a witness did the  
11 Bureau find him to be, just for the record, so we have it  
12 here?

13 MR. ZAUNER: I thought he was candid.

14 CHAIRMAN MARINO: Thank you.

15 MR. ZAUNER: Thank you.

16 MR. HONIG: First I'd like to put to rest the  
17 notion that these rules are complicated and sophisticated  
18 and difficult to understand. Especially for a licensee that  
19 has been around for almost as long as the NAACP.

20 You know, when you look at the Commission's rules,  
21 you open to almost any page and the eyes glaze over these  
22 engineering formulas, and so that's complicated. But this  
23 is simple sociology. Equal opportunity.

24 This licensee has had the privilege of living  
25 through the '60s, '70s, and '80, when these issues were on

1 the front page everyday. It knows or has to know, can be  
2 imputed to know, that a requirement, a word in which --  
3 means something other than just half of a job, that equal  
4 opportunity has to mean something, and isn't just an  
5 amorphous phrase that has no meaning when you put it in a  
6 representation to the Commission.

7 There was a statement that was made by the Church  
8 counsel that the Policy Statement in 1994 was invalidated.

9 I think it's important to know that yesterday the  
10 Commission issued a streamlining order addressing the only  
11 matter of the invalidation of that statement, which related  
12 to the forfeiture guidelines, a matter not in this case.  
13 We'll supplement with the text. All there is now is a press  
14 release and two statements of Commissioners, that make it  
15 clear that the policy remains in effect, is reaffirmed.  
16 There are some streamlining proposed that are not germane to  
17 here. And that they're going to reevaluate the forfeiture  
18 guidelines, and that's all I have copies of what we were  
19 handed this morning.

20 Third, I think that the notion that these were  
21 good statistics needs to be put to rest. And that this was  
22 somewhere within the realm of what's reasonable EEO  
23 performance needs to be put to rest.

24 After 1984, I believe it was, there were no  
25 minorities above the level of a secretary except for a

1 Hispanic salesperson who was not recruited. Her resume was  
2 on file.

3 Mr. Lauher --

4 CHAIRMAN MARINO: What about the lady that died?  
5 Wasn't she in one of the top four positions? The lady --  
6 the black lady that died and had seemed to be the one that  
7 was recruiting blacks --

8 MR. HONIG: We don't know because she died --

9 CHAIRMAN MARINO: In '85 or '86, was it?

10 MR. HONIG: What she did, in '84 or '85, I think  
11 she died. She worked the AM station in a capacity relating  
12 to records of religious programming, I believe. But after  
13 her, there were no persons in decision-making positions,  
14 which was what the Commission's rule focuses on, promoting  
15 diversity.

16 Mr. Lauher wrote these two long memos, identified  
17 many areas in which there was, in his opinion, a failure to  
18 comply with the rules. And in many cases he was correct.

19 He then sent these 10 letters saying, "We don't  
20 have any jobs open now, but here's a card we want you to  
21 send back to us letting us know that you've gotten this."

22 We said, and I think it's true, that that's  
23 somewhat insulting, especially when later on you're told  
24 right in the letter, "We'll let you know of future openings"  
25 and they don't do that.



1           This is not an operation which is unsophisticated  
2   where major things in the one area that you have to comply  
3   to get renewal somehow get forgotten.

4           I want to return to the question of whether this  
5   horrible argument relating to classical music and  
6   stereotypes can be excused --

7           MS. GREENE: Before we turn back to classical  
8   music.

9           MR. HONIG: Sure.

10          MS. GREENE: I just want to make sure that we're  
11   on the same wave length in this.

12          Is it your argument that the Church's outreach  
13   efforts or recruitment efforts were inadequate with respect  
14   to recruiting from the minority communities and women?

15          MR. HONIG: Absolutely. And it has two --

16          MS. GREENE: And is it your argument then that  
17   because the recruitment effort was inadequate, that the  
18   Church was discriminating against, as a general class,  
19   minorities, possibly women?

20          MR. HONIG: Sometimes the absence of effective  
21   recruitment isn't evidence of discriminatory intent. Here  
22   though, where you have a statement made right in the  
23   pleading exposing this invidious stereotype, where you have  
24   a job --

25          MS. GREENE: That's the argument of counsel that